



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 17, 1998

Ms. Judith A. Hunter  
Paralegal  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR98-3169

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120373.

The City of Georgetown (the "city") received two requests for information regarding a reported incident of indecency with a child. You contend that the information responsive to these requests is excepted from public disclosure by sections 552.101 and 552.108 of the Government Code. You have supplied the responsive information. We have considered the exceptions you raise and reviewed the submitted information.

Information is excepted from disclosure by section 552.101 "if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201 of the Family Code makes confidential information relating to reports of child abuse or neglect; it reads in pertinent part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and

working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

“Exhibit C” apparently consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. As you have not cited any specific rule that the department has adopted with regard to the release of this type of information, these records are generally presumed confidential. *See* Open Records Decision No. 440 at 2 (1986). However, we note that this exhibit includes records subject to V.T.C.S. article 4495b, the Medical Practices Act (“MPA”) as well as records subject to chapter 611 of the Health and Safety Code.

Both medical records and information obtained from those medical records are subject to the MPA. *See* V.T.C.S. art. 4495b § 5.08(a), (b), (c), (j); Open Records Decision Nos. 598 (1991), 546 (1990). Access to these records is not governed by chapter 552 of the Government Code. Open Records Decision No. 598 (1991). Section 5.08 of the MPA provides in part as follows:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient’s behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

V.T.C.S. art. 4495b, § 5.08. Section 5.08(j)(3) requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). We have marked the information in this exhibit that is subject to the MPA. The department may only release that information in accordance with the MPA.

Chapter 611 of the Health and Safety Code provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) of that code reads as follows:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We have marked the records that are confidential under Health and Safety Code section 611.002(a). The department may release these records only as provided by Health and Safety Code sections 611.004 and 611.0045.

Thus, the information in "Exhibit C" must be withheld pursuant to Government Code section 552.101, except as otherwise provided in the above discussed statutes.<sup>1</sup>

You posit that 552.108 of the Government Code excepts the information contained in "Exhibit D" from disclosure. Section 552.108 reads in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

You state that "Exhibit D" relates to an investigation that was presented to a grand jury but was no billed. Therefore, this information deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication and is excepted from disclosure by section 552.108.

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, including a detailed description of the offense and arrest, even if this information is not actually located on the front page of the offense report. Open Records Decision No. 127 (1976).

Although section 552.108 authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007. Although you contend that this

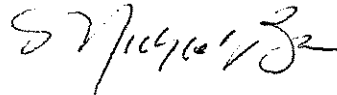
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<sup>1</sup> "We note that if the Texas Department of Protective and Regulatory Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(f)."

exhibit contains information that is protected by rights of privacy, our inspection of this exhibit does not reveal any such information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Michael J. Burns", with a stylized flourish at the end.

Michael J. Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 120373

Enclosures: Submitted documents